IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3206 OF 1998

Mr. Haresh Java ..Applicant

V/s

The Vysya Bank Leasing Ltd.
and another ..Respondent.

Mr. Subhash Jha with Laxmi Memon i/b M/s Dhruve Liladhar & Co. for the applicant.

None for the respondent No.1.

Smt.M.H. Mhatre, AGP for the respondent No.2.

CORAM : S.C. DHARMADHIKARI, J.

DATE : 22ND SEPTEMBER, 2006.

P.C.

. This Criminal Application filed in the year 1998, was admitted by me on 31st August 2006 and directed that it may be heard finally after two weeks, to appear high on board. There is already appearance filed on behalf of respondent No.1-original complainant. The notice was also issued prior to admission and from 1998 there is ad interim order staying further proceedings before the Metropolitan Magistrate 48th Court, Girgaum, Mumbai.

2. It is in such circumstances, I have proceeded to hear the matter finally.

3. The petitioner is the original accused No.6 in Complaint Case No. 511/S/48 pending on the file of Metropolitan Magistrate 40th Court, Girgaum, Mumbai.

4. The complainant alleges commission of offences under Sections 138 and 141 of Negotiable Instruments Act, 1881 (for short N.I. Act).

5. The complainant has stated that the original accused No.1 is a Public Limited Company of which accused Nos. 2 to 6 are Directors. In para 2 of the complaint this is what is stated:-

> "Accused No.1 is also a public Limited Company. Accused No. 2 to 6 are directors of Accused No.1 Company and are liable to repay the amount due and payable to the complainant. The accused No.2 is also a guarantor of Accused No.1. The cheque issued by Accused No.1 were dishonoured and in respect of which the present complainant is being filed. Accused No.2 to 6 are in charge of and are responsible to Accused No.1. or conduct and control of the business and management of the Accused No.1."

6. It is not in dispute that the cheque was issued by the original accused No.1 and the complainant alleges that upon presentation it was returned unpaid with remarks "funds insufficient". The notice was issued which was duly received but the original accused No.1 did not arrange to make payment. The cheques were to the tune of Rs. 3, 27,249.00.

7. Upon complaint being filed, the verification statement was recorded by the learned Metropolitan Magistrate and on 6th March, 1998 he passed an order that a prima-facie case against accused is made out and therefore, process be issued against them.

8. In the verification statement as well, the same allegations as noted above are repeated.

9. The submission of Shri Jha, the learned Counsel appearing for the applicant- original accused No.6 is that the requirement in law is that it must be specifically alleged that <u>at the relevant time the Directors were in-charge and responsible to the Company for conduct of its business</u>. Such an averment is lacking in this case, it is only thereupon that the

company Directors can be held guilty of the offences under the N.I.Act. He has invited my attention to section 138 and 141 of the N.I.Act. Additionally, he has invited my attention to the Judgment of the Supreme Court reported in **(2005) 8 SCC 89 S.M.S. Pharmaceticals Ltd.V/s Neeta Bhalla and Another.** He has also relied upon subsequent decision of the Hon'ble Supreme Court reported in 2006 AIOL 610 Sabitha Ramamurthy and Anr V/s R.B.S. Channabasavaradhya in Criminal appeal Nos. 950 and 951 of 2006, dated 13th September, 2006.

10. With the assistance of Shri Jha, I have perused the complaint and the decision brought to my notice. There is substance in the contention of Shri Jha. The complaint read as a whole does not specifically allege that at the relevant time, that is when cheque was issued and dishonoured, the present petitioner was responsible in the manner set out above. A bare averment of the aforesaid nature would not suffice and that is the law laid down by the Supreme Court in the aforesaid decisions. These decisions are binding upon me.

11. In the light of the above, the application is

liable to succeed. Rule is accordingly made absolute in terms of prayer clause (c). The complaint No.511/S/98

and proceedings in pursuance thereof are quashed in so far as the applicant is concerned.

(S.C.DHARMADHIKARI, J.)